Supreme Court, U. S.
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80-631

No. -

IN THE

Supreme Court of the United States

October Term, 1980

HOSPITAL CENTRAL SERVICES ASSOCIATION,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether a non-profit corporation, whose members are all tax-exempt charitable hospitals within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, (the "Code"), and whose only activity is providing linen and laundry services to those tax-exempt members, is a charitable organization within the meaning of Section 501(c)(3) of the Code and therefore exempt from taxation under Section 501(a) of the Code.

(2) Whether an organization, which is exempt from taxation under Section 501(a) of the Code, is denied exemption because of the later enactment of Section 501(e) of the Code.

(3) Whether Section 501(e) of the Code is the exclusive section under which tax-exempt hospitals may jointly organize and operate a non-profit shared laundry and obtain federal tax-exempt status.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To The Honorable Chief Justice and Associate Justices

Of the Supreme Court of the United States:

Hospital Central Services Association, a Washington non-profit corporation, by its attorneys, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit filed July 21, 1980.

OPINIONS BELOW

The Order of the District Court for the Western District of Washington dated August 8, 1977 in favor of Hospital Central Services Association, is printed at pages A-1 to A-13, *infra,* and reported at 40 A.F.T.R. 2d 77-5646; 77-2 USTC ¶ 9601 (W.D. Wn. 1977). The Opinion of the

United States Court of Appeals for the Ninth Circuit reversing the District Court was filed July 21, 1980 (No. 77-3701), is printed at pages B-1 to B-3, *infra*, and is reported at 623 F.2d 611 (9th Cir. 1980). The Judgment of the Court of Appeals filed July 21, 1980 is printed at page C-1, *infra*, and is not officially reported.

JURISDICTION

The date of the Judgment of the Ninth Circuit Court of Appeals sought to be reviewed is July 21, 1980 which is also the date of its entry. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

(1) Internal Revenue Code of 1954, Title 26 United States Code, Section 501 the pertinent portions of which are as follows:

> § 501. Exemption from tax on corporations, certain trusts, etc.
>
> (a) Exemption from taxation.—An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.
>
> * * *
>
> (c) List of exempt organizations.—The following organizations are referred to in subsection (a):
>
> * * *
>
> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the

publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * *

(e) Cooperative hospital, service organizations.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constitutent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all

net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(2) Treasury Regulations Section 1.501(c)(3)-1(d)(2) provides in pertinent part:

(2) *Charitable defined.* The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501 (c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. . . .

(3) Treasury Regulations Section 1.502-1(b) provides:

(b) If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization (and the parent's tax-exempt subsidiary organizations), it is not exempt since such business would be an unrelated trade or business if regu-

larly carried on by the parent organization. Similarly, if the organization is owned by several unrelated exempt organizations, and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations. For purposes of this paragraph, organizations are related only if they consist of—

(1) A parent organization and one or more of its subsidiary organizations; or

(2) Subsidiary organizations having a common parent organization.

An exempt organization is not related to another exempt organization merely because they both engage in the same type of exempt activities.

STATEMENT OF THE CASE

This case involves a suit for refund of federal income taxes paid for the taxable year 1974 on the grounds that Petitioner is a charitable organization within the meaning of Section 501(c)(3) of the Code and therefore exempt from taxation under Section 501(a) of the Code.

Petitioner, Hospital Central Services Association ("HCSA"), a non-profit Washington corporation, was incorporated in 1966 and is organized and operated to provide central linen and laundry services solely for its member and associate member hospitals ("member"). Each member hospital is a non-profit charitable hospital within the meaning of Section 501(c)(3) of the Code and therefore exempt from taxation under Section 501(a) of the Code. Petitioner's purposes, as set forth in its Agreement of Association, are solely charitable, scientific and educational for the benefit of its members. Only hospitals which are themselves charitable organizations within the meaning of Section 501(c)(3) of the Code and exempt from taxation

are eligible to become members of HCSA. No net earnings of HCSA have inured to the benefit of any private person, firm or corporation, and in the event of dissolution, all of Petitioner's assets are required to be distributed solely to hospital members who are charitable organizations within the meaning of Section 501(c)(3) of the Code and therefore exempt from taxation under Section 501(a) of the Code.

HCSA was organized to eliminate the requirement that each hospital maintain its own laundry facility and to reduce administrative problems and costs for member hospitals. HCSA's linen and laundry services are unique and have been specifically designed to insure sanitary standards and controls necessary for the member hospitals. HCSA is an extension of each participating member hospital. It is impossible for a hospital to discharge its purposes without a laundry and linen service.

HCSA derives income from membership fees based on the amount of services provided to the members. HCSA maintains a linen inventory and processes approximately eleven (11) million pounds of laundry per year for its members, who represent approximately 2,000 hospital beds in the Seattle area. The services performed by HCSA have substantially reduced the overall cost of laundry and linen services to member hospitals, thereby resulting in a reduction in the overall cost of health care in Seattle, Washington. HCSA estimates that through 1974 it saved its members $1,992,250 in investment costs and approximately 39,000 square feet of operational space. Only officers, trustees and employees of member hospitals are eligible to be officers or trustees of HCSA. Petitioner has been controlled and operated solely and exclusively for the benefit of its member hospitals.

HCSA is exempt from Washington state ad valorem real and personal property taxes under Wash. Rev. Code § 84.-36.040. It is further exempt from Washington state sales tax pursuant to Wash. Rev. Code § 82.04.050, which excludes from the terms "sale at retail" or "retail sale" all "sales of laundry service to members of non-profit associations composed exclusively of non-profit hospitals."

HCSA commenced this action in the District Court seeking a refund of federal income taxes paid for the year 1974 and a declaratory judgment that it is a charitable organization within the meaning of Section 501(c)(3) and exempt from federal income taxation under Section 501(a) of the Code. Jurisdiction in the District Court was based on 28 U.S.C. § 1346. HCSA moved for summary judgment based on affidavits. The Government opposed the motion but did not file any controverting affidavits. The facts in this case are therefore not in dispute. The District Court granted judgment in favor of HCSA, holding that HCSA was a charitable organization within the meaning of Section 501(c)(3) of the Code and thereby exempt from taxation under Section 501(a) of the Code. The Ninth Circuit reversed the District Court by a *per curiam* decision holding that under Section 501(c)(3) of the Code, hospitals may only create tax-exempt entities to perform services listed in Section 501(e)(1)(A) of the Code. Laundry services are not listed in Section 501(e)(1)(A) of the Code. HCSA has never claimed to be exempt under Section 501(e) of the Code. Rather, HCSA claims to be a charitable organization within the meaning of Section 501(c)(3) and therefore exempt from taxation under Section 501(a) of the Code.

ARGUMENT

The *per curiam* decision of the Ninth Circuit Court of Appeals in this case relied upon the Third Circuit decision in *HCSC-Laundry v. The United States of America,* 624 F.2d 428 (3d Cir. 1980), petition for certiorari filed September 2, 1980, 49 U.S.L.W. 3165 (No. 80-338). Both decisions erroneously conclude that in 1968, when Congress enacted Section 501(e) of the Code, as evidenced by that Section's legislative history, it thereby denied a non-profit corporation, whose members are all tax-exempt hospitals, from qualifying for tax-exempt status as a "charitable organization" under Section 501(c)(3). This conclusion is contrary to Section 501 of the Code and the decision of the United States Court of Claims in *Northern Cal. Cent. Services, Inc. v. United States,* 591 F.2d 620 (Ct. Cl. 1979), as well as numerous District Court and State Court decisions. In addition, denial of tax-exempt status to joint hospital shared laundries, such as Petitioner, will substantially increase the overall costs of health care services in the United States.

HCSA is a non-profit corporation organized prior to 1968 when Congress enacted Section 501(e) of the Code. HCSA is not formed a a cooperative and has never claimed to be an organization listed in Section 501(e)(1)(A) of the Code. Rather, HCSA claims exemption under Section 501(a) of the Code. Section 501(a) of the Code exempts the income of organizations described in Section 501(c) from taxation. Organizations described in Section 501(c)(3) of the Code include ". . . corporations . . . organized for . . . charitable . . . purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder, or individual . . . ." The purposes of HCSA are

"charitable" within the meaning of Section 501(c)(3) and it was organized and is operated exclusively for charitable purposes.

Section 501(a) of the Code, as it presently exists and as it existed before 1968, provides:

> Exemption from taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

If HCSA is a charitable organization within the meaning of Section 501(c)(3) of the Code, its exemption may only be denied under Sections 502 or 503 of the Code. It cannot be denied exemption under Section 501(e). Had Congress intended the result reached by the Third and Ninth Circuits, *viz.*, that failure to qualify under Section 501(e) denies an exemption under Section 501(a), Section 501(a) would have been modified. *Hospital Bureau of Standards & Sup. v. United States,* 158 F. Supp. 560 (Ct. Cl. 1958); *United Hospital Services, Inc. v. United States,* 384 F. Supp. 776 (S.D. Ind. 1974). The effect of the Third Circuit decision in *HCSC-Laundry v. The United States of America, supra,* and the Ninth Circuit decision in Petitioner's case, is to prevent any charitable organization within the meaning of Section 501(c)(3) that performs hospital services jointly for more than one non-profit hospital from tax-exempt status unless it is also listed in Section 501(e) of the Code.

The legislative history of Section 501(e) does not support the conclusion that Section 501(e) is the exclusive section under which Petitioner may claim tax-exempt status. *Northern Cal. Cent. Services, Inc. v. United States, supra; Metropolitan Detroit Area Hospital Services, Inc. v. United*

States, 445 F. Supp. 857 (E.D. Mich. 1978), *appeal docketed,* No. 78-1205 (6th Cir. May 25, 1978) and No. 78-1218 (6th Cir. June 7, 1978). Rather, when Senators Carlson and Tydings co-sponsored a bill to add new subsection (e) to Section 501 of the Code, Senator Tydings recognized that the Internal Revenue Service would not grant tax-exempt status to hospital service organizations and he expressed his intent of "correcting an unforeseen inequity." 114 Cong. Rec. 8112 (1968). Section 501(e) was designed to liberalize, rather than restrict, the classification of charities under Section 501(c)(3). The Conference Report provides, in part:

> Section 109 of the conference substitute . . . *adds a new subsection to section 501* of the Internal Revenue Code which, in effect, provides a tax exempt status for certain cooperative hospital service organizations. . . .

Conf. Rep. No. 1533, 90th Cong., 2d Sess., p. 43 *reprinted in* [1968] U.S. Code Cong. & Ad. News 2373, 2390 (1968-2 C.B. 801, 814). Congressional Reports indicate that laundry services were intentionally omitted from Section 501(e) of the Code. It does not follow, however, that the omission of laundry services from Section 501(e) excludes Petitioner from tax-exempt status if it is a charitable organization within the meaning of Section 501(c)(3) of the Code.

The fact that the legislative history of Section 501(e) indicates that Congress believed hospital laundry service organizations, such as HCSA, were not exempt under Section 501(a) is not material. Congressional interpretation of existing law should be given no weight in this Court's interpretation of that law. *United States v. Wise,* 370 U.S. 405 (1962). Moreover, the fact that the Internal Revenue Service had issued Revenue Ruling 69-160, 1969-1 C. B. 147 holding that an organization providing laundry and

other services exclusively to its tax-exempt member hospitals was not exempt from taxation is not binding on this Court. Revenue Rulings merely constitute an interpretation of the Internal Revenue Code by the Service and are not binding on the courts. *Stubbs, Overbeck & Assoc., Inc. v. United States,* 445 F.2d 1142 (5th Cir. 1971).

A brief history of the efforts of hospital laundry organizations, which are owned exclusively by tax exempt hospitals, to gain federal tax-exempt status will demonstrate the substantial conflict in decisions on this important question of federal tax law. In *Hospital Bureau of Standards & Sup. v. United States, supra,* the Court of Claims held that a non-profit corporation, formed solely for the purpose of purchasing and supplying hospital supplies to its tax-exempt hospital members, was a charitable corporation within the meaning of Section 501(c)(3) of the Code and exempt from taxation under Section 501(a). In 1968 Congress enacted Section 501(e) of the Code to enlarge the category of charitable organizations exempt under Section 501(a) of the Code. In 1974, *United Hospital Services, Inc. v. United States, supra,* held that a central laundry providing laundry services solely to its tax-exempt hospital members was exempt under Section 501(a) of the Code. *United Hospital* rejected the Government's argument that Section 501(e) was the exclusive basis for a hospital laundry service organization to gain tax exemption. The *United Hospital* court reasoned as follows:

> The clearly expressed Congressional purpose behind the enactment of Section 501(e) was to enlarge the category of charitable organizations under Section 501(c)(3) to include certain cooperative hospital service organizations, and not to narrow or restrict the reach of Section 501(c)(3). The latter section was not

> modified by the legislation in any way, and the legislation does not purport to take away charitable status from a corporation which had already acquired it. Insofar as this case is concerned, therefore, Section 501(e) is irrelevant.

384 F. Supp. at 781. The Government did not appeal the *United Hospital* decision. Despite *Hospital Bureau* and *United Hospital,* the Internal Revenue Service denied exemption to Petitioner and other similar organizations. These denials were based on the Government's contention that such organizations are "feeder" organizations under Section 1.502-1(b) and that such organizations do not meet the requirements of Section 501(e) of the Code. See Rev. Rul. 69-160, 1969-1 C. B. 147; Rev. Rul. 54-305, 1954-2 C. B. 127. Prior to 1980, that position had been rejected by every court that considered this issue.

In the past 10 years there has been a substantial increase in the number of central laundry organizations providing services to their tax-exempt hospital members. It is estimated that there are approximately 36 central hospital laundry organizations owned and operated by non-profit tax-exempt hospitals, providing service to over 175 hospitals throughout the United States. The amount of potential federal income taxes and resulting hospital costs is substantial. As a result, numerous cases have generated conflicting decisions. These cases involve an important question of federal tax law which has not been, but should be settled by this Court.

In 1979 in *Northern Cal. Cent. Services, Inc. v. United States, supra,* the United States Court of Claims held that a non-profit corporation, which provided shared laundry services to its non-profit tax-exempt hospital members,

was a charitable organization within the meaning of Section 501(c)(3) and exempt from taxation under Section 501(a) of the Code. The Court of Claims expressly rejected the Government's argument that the taxpayer must qualify, if at all, under Section 501(e) of the Code. The Court of Claims held as follows:

> Section 501(e) provides an exemption for some cooperative organizations which adhere to the requirements stated therein. We agree with plaintiff that the intent of Congress in passing § 501(e) was to broaden the class of organizations entitled to an exemption as a "charitable organization," not to narrow it, and that, as to laundry services, it left the law as it was.
>
> In considering § 501(e)'s history, it is necessary to examine not only what Congress did do in 1968 when it added that provision, but what it did not do. Proponents of the amendment argued that rigidities in the law at that time, particularly the "feeder" provision of § 502, to be discussed below, discouraged the formation of hospital service organizations. See 114 Cong. Rec. 8112 (1968) (remarks of Senator Tydings). But nowhere in the legislative history of § 501(e) is there a reference to an intent to amend § 501(c)(3), or to alter the then-present interpretation. Indeed the House Report specifically stated that § 501(e) was to be an *addition* to § 501. H.Rep.No. 1533, 90th Cong., 2d Sess. 43 (1968), U.S. Code Cong. & Admin. News 1968, p. 2341.
>
> * * *
>
> When Congress passed the present § 501(e) in 1968, though, it did exclude shared laundry services from its list of exempt service organizations, but made no attempt to alter *Hospital Bureau of Standards'* interpretation of § 501(c)(3) or that section's applicability to shared laundry services, despite the fact, above mentioned, that the Congressmen were aware of *Hospital Bureau of Standards,* and its holding. Thus, the interpretation of § 501(c)(3) as rendered by this court in *Hospital Bureau of Standards* remains intact. The provision we interpreted was left untouched, while

> other law was written to take care of other decisions by the IRS with which Congress was dissatisfied.

591 F.2d at 623-4.

Northern Cal. Cent. Services, Inc. is in direct conflict with the Ninth Circuit Court of Appeals in this case and the Court of Appeals for the Third Circuit in *HCSC-Laundry v. The United States of America, supra.* The Third Circuit disagreed as follows:

> In the most recent decision on comparable facts, *Northern California Central Services, Inc. v. United States, supra,* the Court of Claims adhered to its prior decision in *Hospital Bureau.* After considering the effect of section 501(e), it concluded that the intent of Congress was not to narrow the class of organizations entitled to an exemption as a "charitable organization" but to broaden that class, "and that, as to laundry services, it left the law as it was." *Id.* at 624. As noted in our prior discussion, we believe the legislative history to show a contrary legislative intent than that found by the Court of Claims.

624 F.2d at 435-36.

Because of the recurring importance of the issue and the conflict between the Court of Claims, a court of co-equal rank with the Circuit Courts, and two Circuit Courts, this Court should grant certiorari. *United States v. Zacks,* 375 U.S. 59 (1963). This case presents appropriate reasons for a review on writ of certiorari under Rule 17 of this Court.

The Tax Court has done little to quell what it has identified as the "long and stormy" tax history of hospital laundry service organizations. In *Associated Hospital Services, Inc. v. Commissioner,* 74 T.C. No. 17 (May 6, 1980), *appeal docketed,* No. 80-3596 (5th Cir. June 4, 1980), the Tax Court held that a laundry service organization owned and operated by several tax-exempt hospitals was not tax exempt based upon Treasury Regulation 1.502-1(b) relating

to feeder organizations. This decision did not reach the issue relating to Section 501(e) of the Code and is otherwise of little value in light of the concurring opinions by two judges and the two separate dissenting opinions by four judges. Even the Tax Court majority felt "constrained by the weight of legislative history" to reject its inclination to hold the organization tax-exempt. This case is now on appeal to the Fifth Circuit.

All of the District Courts which have considered the same issue have held that Section 501(e) is not exclusive and that non-profit organizations such as HCSA are charitable organizations within the meaning of Section 501(c)(3) of the Code and therefore exempt from taxation under Section 501(a) of the Code. *United Hospital Services, Inc. v. United States,* 384 F. Supp. 776 (S.D. Ind. 1974); *Metropolitan Detroit Area Hospital Services, Inc. v. United States,* 445 F. Supp. 857 (E.D. Mich. 1978), *appeal docketed,* No. 78-1205 (6th Cir. May 25, 1978) and No. 78-1218 (6th Cir. June 7, 1978); *Community Hospital Services, Inc. v. United States,* 43 A.F.T.R. 2d 79-934; 79-1 U.S.T.C. ¶ 9301 (E.D. Mich. 1979), *appeal docketed,* No. 79-1286 (6th Cir. May 29, 1979); *Chart Inc. v. United States,* 491 F. Supp. 10 (D. D.C. 1979), *appeal docketed,* Nos. 80-1138 and 80-1339 (D.C. Cir. April 14, 1980); *HCSC-Laundry v. The United States of America,* 473 F. Supp. 250 (E.D. Pa. 1979), *rev'd,* 624 F.2d 428 (3d Cir. 1980) Pet. for Cert. filed September 2, 1980, 49 U.S.L.W. 3165 (No. 80-338); *HCSA v. United States,* the instant case. Similar issues are now pending in other District Courts and the Court of Claims.

Similarly, numerous state court decisions have concluded that a non-profit corporation formed solely for the purpose

of providing services to its tax-exempt hospital members is exempt from state real and personal property taxes. *See, e.g., Children's Hospital Medical Center v. The Board of Assessors,* 353 Mass. 35, 227 N.E. 2d 908 (1967); *Hospital Purchasing Service v. City of Hastings,* 11 Mich. App. 500, 161 N.W.2d 759 (1968). HCSA was also granted exemption from Washington state real and personal property taxes after litigation. Although an exemption under Section 501(a) of the Code does not depend upon state law, federal courts have considered state court rulings to determine the broad outlines of "charity". *Coeur d'Alene Country Club v. Viley,* 64 F. Supp. 540 (N.D. Idaho 1946).

Hospital laundry service is a sensitive matter. If not performed with sufficient quality controls, it can be the means of spreading diseases that hospitals hope to contain or cure. Petitioner provides its member hospitals with linen and laundry services at less cost and under more sanitary conditions than other available laundries. Each non-profit hospital could maintain its own laundry at a greater cost and operate with tax-exempt status. Whether each hospital washes the sheets itself or has that duty performed by a separate organization should be of no tax significance. If the activity is tax-exempt when conducted by the individual tax-exempt hospital, it does not become a non-exempt activity simply because it is spun off to a central laundry owned by the tax-exempt members. Shared laundry services are an essential part of the cost containment efforts favored by Congress in the area of health care services. See *Virginia Professional Standards Review Foundation v. Blumenthal,* 466 F. Supp. 1164 (D. D.C. 1979).

CONCLUSION

There now exists a conflict between the Court of Claims and the Third and Ninth Circuits. The same issues are also pending on appeal to the Fifth Circuit, the Sixth Circuit, (two cases) and the Court of Appeals for the District of Columbia. Petitioner, and other similar entities, are charitable organizations within the meaning of Section 501(c)(3) of the Code and exempt from taxation under Section 501(a). An organization exempt under Section 501(c)(3) of the Code cannot be denied exemption because of Section 501(e). The legislative history does not support the result reached by the Ninth Circuit. This Court should grant certiorari to resolve the conflict between the Circuit Courts of Appeal and the Court of Claims in order to provide for the uniform administration of the federal tax laws.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HOSPITAL CENTRAL SERVICES ASSOCIATION, a nonprofit corporation, *Plaintiff*, v. UNITED STATES OF AMERICA, *Defendant*.	Civil No. C76-779M ORDER

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington
AUG. 8, 1977
EDGAR SCOFIELD, *Clerk*
By ....., *Deputy*

THIS MATTER comes on for consideration before the undersigned Judge of the above-entitled Court upon cross-motions for summary judgment. On May 9, 1977, the plaintiff moved for summary judgment based upon the records and files, its brief in support of the motion, its answers to defendant's interrogatories, and the affidavits of Frank Metheny, John A. Dare and George Stone. On June 27, 1977, the defendant filed its "Opposition to Plaintiff's Motion for Summary Judgment" on the grounds that "there exist genuine issues of material fact with respect to plaintiff's theory of recovery herein which preclude the granting of summary judgment in favor of plaintiff." Simultaneously, the defendant cross-moved for summary judgment in its favor, pursuant to Rule 56, Federal Rules of Civil Procedure, "on the grounds that no genuine issues of material fact exist in respect of the defenses interposed herein." The defendant filed, unaccompanied by affidavits,

"Defendant's Brief In Support of Its Opposition to Plaintiff's Motion for Summary Judgment and Its Cross-Motion for Summary Judgment," to which plaintiff has since filed a reply.

The following facts stand uncontradicted in the record. Plaintiff Hospital Central Services Association (HCSA) was incorporated on March 30, 1966, as a nonprofit Washington corporation by four hospitals, namely, Virginia Mason Hospital Association; Sisters of Charity House of Providence; Northwest Memorial Hospital Association and West Seattle General Hospital for the purpose of operating a central hospital laundry facility. Shortly after the organization of HCSA, Overlake Memorial Hospital and Children's Orthopedic Hospital Association joined HCSA. Effective July 31, 1970, West Seattle General Hospital withdrew. Subsequently, Swedish Hospital Medical Center became a member of the Association. In addition, in 1971 Ballard Community Hospital, and in 1974, Seattle General Hospital became associate members of HCSA.

At all times material since January 1, 1974, therefore, the following nonprofit charitable hospitals were members of HCSA:

Children's Orthopedic Hospital and Medical Center
Northwest Memoral Hospital Association
Overlake Memorial Hospital Association
Providence Medical Center
Swedish Hospital Medical Center
Virginia Mason Hospital Association

In addition, Ballard Community Hospital and Seattle General Hospital are associate members.

Each member hospital and each associate member hospital is a nonprofit hospital exempt from federal income

taxation under Section 501(c)(3) of the Internal Revenue Code, and exempt from paying ad valorem real and personal property taxes in the State of Washington. Attached as Exhibit A hereto is a true and correct copy of the oral decision of Judge Robert M. Elston in the matter of *Hospital Central Services Association v. King County,* Cause No. 738034, rendered March 1, 1974 in the Superior Court of the State of Washington in and for the County of King.

The HCSA laundry facility, which was completed in 1968, now processes the laundry needs and maintains a linen inventory for its members at the present rate of approximately eleven million pounds a year.

The processing of the laundry is specifically designed and controlled to insure sanitary standards. Soiled laundry is not transported in a truck at the same time as clean laundry. The carts used in the pickup and delivery of laundry are made of fiberglass and are sanitized between each pickup and delivery. Each truck is sanitized after each delivery of soiled laundry to HCSA. The unloading and loading of trucks occur on separate ends of HCSA's plant to reduce the risk of spread of bacteria. All clean laundry being delivered to a hospital is covered with a plastic cover to insure maintenance of a sanitary condition, which cover is used only once and is disposed of after its use. A positive-negative air-flow system is used at the laundry to prevent the spreading of bacteria and infection from the soiled laundry, which means that air flows only from the area servicing clean laundry to areas servicing soiled laundry and not vice versa.

HCSA derives income from membership fees based on the amount of service actually provided; the amount of charge per pound is set from time to time by the Board of

Trustees—each member of which is *de jure* also an officer, trustee or employee of a member hospital—and is in an amount which will cover the actual cost of operation, including purchases of necessary equipment, and will provide for the amortization of a long-term bank loan. HCSA only charges per pound amounts sufficient to meet said annual operating costs. No net earnings from HCSA inure to the benefit of any individual, and in the event of dissolution, all the assets of HCSA are required to be distributed to organizations which are qualified as tax exempt under Section 501 of the Internal Revenue Code of 1954, as amended.[1]

HCSA estimates that from incorporation through the year 1974, it saved its member hospitals $1,992,250 in investment costs and approximately 39,000 square feet of operational space. HCSA employs approximately 110 to 128 persons. The laundry is managed by a manager and a managerial staff consisting of approximately nine persons.

On July 9, 1975, HCSA filed an application for recognition of Exemption from Federal Income Taxation, Form 1023, the Application for Recognition of Exemption was denied by letter from the Internal Revenue Service dated August 3, 1976. After reconsideration, by letter dated September 17, 1976, the Internal Revenue Service affirmed its ruling of August 3, 1976, denying exempt status to the plaintiff.

In the manner required by law, HCSA filed its corporate income tax for the year ending December 31, 1974 with the Director of the Internal Revenue Service Center, Ogden,

1. The Court has considered footnote 3 at page 9 of the defendant's brief in support of its opposition to the plaintiff's motion for summary judgment.

Utah. HCSA paid a tax for the year 1974 in the amount of $3,862. In 1975, HCSA had a net operating loss which it carried back and all of the 1974 tax paid was recovered except $178. As a result of Notice dated September 1, 1975, HCSA paid a penalty of $96.55 and interest of $89.35 for a total of $185.90 for the year ending December 31, 1974.

On or about August 25, 1976, HCSA filed its amended income tax return to recover a refund of $178.00 for taxes paid for 1974. To date the defendant has not acted with respect to said claim for refund.

On or about August 25, 1976, HCSA filed its claim for refund on Form 843, relating to the taxable year ending December 31, 1974. On October 4, 1976, the District Director of the Internal Revenue Service denied HCSA's claim for refund in the amount of $185.90.

The plaintiff brings this action to recover that amount which it alleges was erroneously assessed and collected.

The root question presented here is whether HCSA is a charitable organization within the meaning of Section 501(c)(3) and therefore exempt from taxation under Section 501(a). Sub-issues presented are (1) whether HCSA's claimed status as a charitable organization is defeated by operation of Section 501(e), which was adopted in 1968, and (2) whether HCSA is prohibited from exemption by operation of Section 502 by reason of being a for-profit "feeder organization."

The identical issues raised here by the motions for summary judgment, save and except for the defendant's claim that material questions of fact exist with respect to plaintiff's theory of recovery, were addressed and decided in *United Hospital Services v. United States*, 384 F. Supp.

776 (S.D. Ind., 1974), a case in which both sides agreed to waive trial by jury and proceed on stipulated facts. The stipulated facts in *United Hospital* were in all material respects the same as the facts now before the Court. (See defendant's qualified acceptance of the Statement of Facts as presented in the plaintiff's brief in support of its motion for summary judgment (Defendant's Brief in Support of Its Opposition to Plaintiff's Motion for Summary Judgment, at page 1.))

The defendant launches a three-fold attack in support of its motion for judgment and to defeat the counter-motion of the plaintiff. First, the defendant contends that no for-profit organization can qualify for tax exemption by hiding under the skirts of § 501(c)(3). The defendant's problem is that he doesn't have the facts to go with that clearly valid proposition.

HCSA, like the hospital services organization in *United Hospital,* was incorporated under state law as a non-profit corporation, organized and operated to provide services which are essential to the functioning of the charitable associations which are its members. The following uncontroverted, factual representations from the affidavit of Mr. Metheny at pages 3 and 4 illuminate the purpose of HCSA and its manner of operations.

> (a) Each of the member hospitals is represented by its administrator or assistant administrator on the Board of Trustees of HCSA, and each member hospital participates in the overall policy of HCSA and collectively they absolutely control the operations of HCSA, which are a necessary part of the operations of the member hospitals.
>
> (b) Each of the member hospitals participates in the actual operations of HCSA with respect to the planning, accounting and finance, quality control and

standardization. A special Linen Advisory Committee makes recommendations concerning purchasing and processing specifications and has developed special procedures for linen utilization and distribution.

(c) All members directly receive the benefit of standardization and centralization, without profit to any third party, in that the price each member hospital is charged for the laundry service includes only the costs of operation, retirement of debt, and new equipment purchases.

The plaintiff estimates that HCSA activities from its incorporation through 1974 have saved its members $1,992,250 in investment costs alone and has provided services at cost. HCSA has never offered its services to anyone or any business other than its members. The fact that a nonpublic and non-tax-exempt hospital (West Seattle General Hospital) was a member of HCSA from 1966 to 1970, and was serviced by HCSA during that period is not material to the plaintiff's claim for exemption under Section 501(c)(3) for the year 1974.

Under the foregoing facts, defendant's attack on HCSA as a for-profit or "feeder" organization must of necessity fail. Furthermore, the foregoing facts compel the Court to conclude that HCSA is a charitable organization under Section 501(c)(3) and therefore exempt from taxation under Section 501(a). So to find is to reject the defendant's second argument, to wit, that the plaintiff, as a "cooperative" hospital service organization, can qualify as tax exempt, if at all, *only* under Section 501(e) of the Internal Revenue Code of 1954. In rejecting that argument, the Court adopts the reasoning of the *United Hospital* opinion, which reached the same conclusion.

Finally, the defendant contends, in opposing the plaintiff's motion for judgment on its claim as a matter of law,

that a crucial fact, stipulated to in *United Hospital,* and "heavily" relied upon therein, is missing here, namely, that "no commercial laundry in the area was able or willing to provide specialized laundry service to the hospitals." The defendant takes the position that because the record is silent in this respect, there remains a material issue for trial with respect to the plaintiff's claim for a refund in the case at bar. Specifically, the defendant's argument reads as follows at page 8 of its brief:

> Plaintiff may thus well be "competing unfairly with ordinary, taxed business entities," an important concern of the court in *United Hospitals* [sic], 384 F. Supp., at page 780.

That representation based on a silent record falls entirely short of the response which is required of an adverse party when a motion for summary judgment is made and supported as provided in Rule 56, F.R. Civ. P. Rule 56(e) requires that the adverse party, by affidavits or as otherwise provided in this rule, *must set forth specific facts* showing that there is a genuine issue for trial.

The fact that the plaintiff does not compete with commercial laundries is not disputed in the present record.

It being the opinion of the Court that for the reasons discussed above the plaintiff is entitled to the summary judgment prayed for, NOW, THEREFORE,

IT IS ORDERED and DECREED that the motion of the defendant for summary judgment be and the same is hereby DENIED, and

IT IS ORDERED and DECREED that the motion of the plaintiff for summary judgment be and the same is hereby GRANTED, and

IT IS ORDERED, ADJUDGED and DECREED that judgment be entered against the defendant in favor of the plaintiff for the recovery of interest and penalty taxes in the amount of $185.90 which was erroneously assessed and collected for the year ending December 31, 1974.

Counsel for the plaintiff shall present to the Court an appropriate judgment in accordance with this Order.

DATED this 8th day of August 1977.

s/s WALTER T. McGOVERN
Chief United States District Judge

Exhibit A

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HOSPITAL CENTRAL SERVICES ASSOCIATION, *Plaintiff,* v. KING COUNTY, a legal subdivision of the State of Washington, *Defendant.*	No. 768034

ORAL OPINION

HON. ROBERT M. ELSTON
March 1, 1974

THE COURT: I appreciate the materials that have been presented, the helpful briefs, the affidavit of Mr. Carney, the exhibits that have been attached. This is the kind of case that it comes as no surprise to hear a sugges-

tion that no matter what the ruling is, it will be appealed. That seems almost inherent in the nature of it.

Because of that, I want to say I have considered both briefs, the affidavit of Mr. Carney, the exhibits that have been attached to the plaintiff's brief, and the documents contained in the clerk's file, and would ask that when an order is prepared on the decision, that the order on summary judgment specify those documents I have relied upon in reaching my decision.

The *Barlow* case makes it very clear that the statute is not to be enlarged by judicial construction. The statute, RCW 84.36.040, grants an exemption from taxation for hospitals, and this exemption is in derogation of the general public interest to have property remain on the tax rolls, so that this exemption must be strictly construed. Judicial interpretation cannot enlarge the exemption and that it the basic consideration when there is a claim for exemption.

In this case one of the arguments made is that because the Hospital Central Services Association is a separate corporation and in law having a separate entity because of that, that this means that it does not qualify for an exemption because the exemption is limited to hospitals and not to some separate corporations which might perform services or supply materials for hospitals.

My conclusion is that the nature of the association is not something that would extend the exemption statute by applying it to the association. The association is owned by the member hospitals. All member hospitals are charitable organizations. No aspect of the Association's activities is devoted to anything other than servicing and furnishing

supplies for the member hospitals. No aspect of the Association's activities is directly or indirectly for the benefit of any other than a charitable hospital.

It is, I think, clear in 84.36.040 that the last paragraph of that statute does cover this situation in a general way when it provides that a hospital within the meaning of this section includes any portion of the hospital building or other buildings in connection therewith used as a necessary home or as a residence for persons engaged or employed in the operation of the hospital or operated as a portion of the hospital unit.

The laundry involved here that is operated by the Association is operated as a portion of the hospital unit and I do not think it violates that concept to have that association operate as a portion of six hospital units as distinguished from one hospital unit. I do not think the fact that it serves multiple hospitals makes it any less a hospital operation than if it served simply one individual hospital.

Its scope of operation is larger and the effect of serving six hospitals and having sometimes to make independent decisions with respect to some incidental differences that might arise I do not think is fatal to its operation, the concept of its operation as a part of the hospital unit. It has been set up to comply as completely with the requirements of charitable institutions as it can be, both with respect to the property that it has and the distribution of that property upon its ceasing to exist. There is apparently substantial reliance by the State Board of Tax Appeals on the fact that 96 per cent of the garments and linens laundered by the Association are owned by the Association and the Association then makes a charge to the member hospitals

in the form of rent as the State Board of Tax Appeals has indicated.

I frankly do not appreciate the significance of that fact as derogating in any way from the fact that the Association operates as a part of a hospital unit in furnishing exclusively laundry or laundry-type services or supples.

The Association owns the garments and linens that are laundered. The Association is owned by the member hospitals. And so the member hospitals, in effect, own the garments and linens if there were to be a cessation of activities, for example, by the Association. It almost sounds like a paraphrase of Gertrude Stein, "A rose is a rose is a rose." The garments are garments of the Association which is owned by the hospitals and so forth.

The *Barlow* case, my reading of it—and I do not suggest that there might not be different interpretations of this case; it probably presents a good opportunity for an appellate court to make whatever clarification it wishes with respect to it—but my reading of the *Barlow* case is that the emphasis is upon the use rather than the formality of structure or format of the entity.

The use here is strictly a hospital use. There is the matter of performing hospital laundry services, period, and as I have indicated before, I do not think that the fact that this is being done for more than one hospital changes that aspect.

I do not think, therefore, that it is an extension of an exemption to say that an association that has been set up for the sole purpose of performing only hospital laundry functions, limited strictly to doing this for charitable hospitals, is extending that exemption in any way. It is simply

recognizing that the Association is doing a hospital function and doing it for a number of hospitals, presumably but not determinatively on a more efficient basis for the hospitals.

Therefore, my conclusion is that the plaintiff's motion for summary judgment must be granted. The defendant's motion for summary judgment must be denied. In view of that ruling I do not think it is necessary to determine the question of equitable estoppel.

If counsel will prepare an order, then, based on the ruling. Thank you again for your presentations.

(End of proceedings.)

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HOSPITAL CENTRAL SERVICES ASSOCIATION, a nonprofit corporation, *Appellee,* v. UNITED STATES OF AMERICA, *Appellant.*	No. 77-3701 D.C. No. C76-779M OPINION

FILED
July 21, 1980
RICHARD H. DEANE, *Clerk*
U.S. Court of Appeals

Appeal from the United States District Court
for the Western District of Washington
Walter T. McGovern, District Judge, Presiding
Argued and submitted April 8, 1980

Before: GOODWIN and FERGUSON, Circuit Judges, and WILLIAMS,* District Judge

PER CURIAM

Hospital Central Services Association, a nonprofit Washington Corporation which operated a laundry, paid income taxes for 1974 and, after exhausting its administrative remedies, sued under § 501(c)(3) of the Internal Revenue Code for a refund. The district court held the association to be a tax-exempt charity and granted the refund. The government appeals, contending that § 501(c)(3) does not extend to hospital laundry services like those involved here.

*The Honorable Spencer Williams, United States District Judge for the Northern District of California, sitting by designation.

The identical issues were recently before the Third Circuit in *HCSC-Laundry v. United States of America,* No. 79-2286 (3rd Cir. June 6, 1980). There, as here, a group of charitable hospitals had formed a nonprofit corporation in order to effect economies of scale that could not be realized if each hospital were to install and staff its own laundry. There, as here, the laundry services were performed for the tax-exempt hospitals that had created the corporation.[1] There, as here, the district court held that because a charitable hospital could operate its own laundry without impairing its exemption under § 501(c)(3), it should be able to pool its laundry facilities (and its exemptions) with other hospitals and thus confer tax exemption upon the new entity.

A group of charitable § 501(c)(3) hospitals may jointly create and own a tax-exempt entity under § 501(e)(1)(A) to perform certain functions: *e.g.,* computer service, purchasing, warehousing, laboratory, printing, billing and collecting, and other services listed in § 501(e)(1)(A) of the Code. The issue is whether, under § 501(c)(3), the hospitals may create tax-exempt entities to perform services not listed in § 501(e)(1)(A).

After a careful examination of the legislative history of § 501(e)(1)(A) and of established legal principles which we need not repeat here, the Third Circuit held that Congress had intentionally omitted laundry services from the list of commercial services for which charitable hospitals could form jointly-owned entities that would be tax-exempt.

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1. The taxpayer in the case at bar may not strictly qualify under § 501(e)(1)(B) because, at the time it was organized, it served a hospital that did not then qualify for exemption under § 501(c)(3). We need not reach this question, however, as the case turns on the meaning of § 501(e)(1)(A).

Whether the legislative decision to favor the commercial laundry industry by removing a tax advantage from competitors was a wise or equitable decision is obviously not a judicial question. On the only judicial question—the meaning of the tax law—we agree with the Third Circuit for the reasons stated in its opinion.

Reversed.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HOSPITAL CENTRAL SERVICES ASSOCIATION, a nonprofit corporation, *Appellee,* v. UNITED STATES OF AMERICA, *Appellant.*	No. 77-3701 DC CV 76-779 WTM JUDGMENT

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington
July 21, 1980
JOE R. ROMANE, *Clerk*
By ..... *Deputy*

APPEAL from the United States District Court for the Western District of Washington (Seattle).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle), and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

Costs in this court in favor of the appellant and against the appellee.

Costs:

BRIEF FOR THE APPELLANT	$227.45
TOTAL	$227.45

Filed and entered July 21, 1980.

Supreme Court, U. S.
FILED
NOV 19 1980
MICHAEL RODAK, JR., CLERK

No. 80-631

In the Supreme Court of the United States

OCTOBER TERM, 1980

HOSPITAL CENTRAL SERVICES ASSOCIATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

LAWRENCE G. WALLACE
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-631

HOSPITAL CENTRAL SERVICES ASSOCIATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The question presented in this federal income tax case is whether a corporation operated by several tax-exempt charitable hospitals for the purpose of providing hospital laundry and linen supply services is itself a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). This question is also presented in *HCSC-Laundry* v. *United States*, petition for a writ of cert. pending, No. 80-338, with which the decision below is in accord (Pet. App. B3).[1]

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[1] The court below noted (Pet. App. B2 n.1) that petitioner might not qualify under Section 501(e)(1)(B) because at the time it was organized, it served a hospital that was not exempt under Section 501(c)(3) (see Pet. App. A2). Since the case turned on the meaning of Section 501(e)(1)(A), the court below did not reach this question, which could have constituted an alternative ground of decision in favor of the government.

The pertinent facts may be summarized as follows: Petitioner, whose principal place of business is located in Seattle, Washington, was incorporated on March 30, 1966, as a nonprofit Washington corporation to operate a central hospital facility for taxpaying and tax-exempt hospitals (Pet. App. A2; Complaint, Exh. A, at 7). During 1974, the taxable year at issue, petitioner provided laundry service to eight nonprofit hospitals. Petitioner has no capital stock. It has two classes of membership: active and associate. Active members are required to execute long-term linen service agreements to use petitioner to satisfy their laundry requirements. Associate members are not required to execute long-term service agreements and laundry service to them may be terminated at will. Only active members are entitled to vote for and be members of the board of trustees (Pet. App. A2; R. 38-41).[2]

Petitioner derives income from membership fees based on the amount of service actually provided. The charge per pound of laundry is set from time to time by the Board of Trustees and is calculated so as to cover the actual costs of operation, retirement of debt and new equipment purchases (Pet. App. A3-A4).

No part of petitioner's net earnings inures to the benefit of any individual (Pet. App. A4). Petitioner employs between 110 and 128 persons, including a manager and a managerial staff consisting of approximately nine persons (Pet. App. A4).

On July 9, 1975, petitioner filed an application for recognition of exemption from federal income taxation. The Internal Revenue Service denied this application by letter dated August 3, 1976 (Pet. App. A4).

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[2] "R." refers to the record on appeal in the court of appeals.

Petitioner filed its corporate income tax return for 1974 and paid $3,862 in taxes. In 1975, it had a net operating loss which it carried back and utilized to recover all the tax paid in 1974 except $178.[3] In response to a notice from the Internal Revenue Service dated September 1, 1975, petitioner paid a penalty of $96.55 and interest of $89.35 for 1974 (Pet. App. A5). On August 26, 1976, petitioner filed a claim for refund for 1974 to recover the penalty and interest paid for that year in the amount of $185.90. On October 4, 1976, this claim of refund was denied (Pet. App. A5).

On November 12, 1976, petitioner commenced this refund suit in the United States District Court for the Western District of Washington to recover the $185.90 paid as penalty and interest for its 1974 tax year and claimed that it was entitled to this refund because it was a tax-exempt organization "organized and operated exclusively for religious, charitable, scientific, * * * or educational purposes * * *" under Section 501(c)(3) of the Internal Revenue Code (Pet. 2).

The district court upheld petitioner's claim (Pet. App. A1-A13). The court of appeals reversed (Pet. App. B1-B3). It noted that in enacting Section 501(e) of the Internal Revenue Code, Congress had made a legislative decision not to give tax-exempt status to mutual cooperative hospital laundries such as petitioner. The court then stated (Pet. App. B3): "Whether the legislative decision to favor the commercial laundry industry * * * was a wise or equitable decision is obviously not a judicial question. On the only judicial question—the

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[3]On August 25, 2976, petitioner filed an amended income tax return to recover a refund of $178 for taxes paid for 1974. The Internal Revenue Service had not acted with respect to that claim as of the date of the district court opinion. Petitioner has not sought to recover the $178 in this refund suit.

meaning of the tax law—we agree with the Third Circuit for the reasons stated in its opinion [in *HCSC-Laundry* v. *United States*, 624 F. 2d 428 (1980)]."

The question presented in this case is identical to that before the Court in *HCSC-Laundry*, No. 80-338. In response to the petition in that case, we did not oppose certiorari but suggested that summary affirmance might be appropriate in view of the clarity of the legislative history demonstrating Congress' intent to exclude mutual hospital laundries from tax-exempt status. The Court should therefore hold this case and dispose of it in accordance with its disposition in No. 80-338.

Respectfully submitted.

LAWRENCE G. WALLACE
*Acting Solicitor General**

NOVEMBER 1980

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* The Solicitor General is disqualified in this case.

DOJ-1980-11